Florida State University Journal of Land Use and Environmental Law

Volume 18
Number 2 *Spring 2003*

Article 10

April 2018

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Cover Page Footnote
Brett Paben, a staff attorney in the Florida office of WildLaw, assisted with parts of this article. www.wildlaw.org.

ENVIRONMENTALISTS AND FOREST LANDOWNERS: WHY WE MUST WORK TOGETHER

RAY VAUGHAN*

Table of Contents

> If the 21st century is to be the time of healing the forests of the world, we must be willing to work together as people who care about our own future and that of our children and their children. To heal the forests, we must be willing to share openly and freely any and all knowledge necessary to achieve that end. In addition, we must be willing to cooperate with one another in a coordinated way, for cooperation without coordination is empty.[1]

> If a man walks in the woods for love of them half of each day, he is in danger of being regarded as a loafer, but if he spends his whole day as a speculator, shearing off those woods and making earth bald

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1. CHRIS MASER, SUSTAINABLE FORESTRY: PHILOSOPHY, SCIENCE AND ECONOMICS, xviii (CRC Press 1997).

before her time, he is esteemed an industrious and enterprising citizen.[2]

I. INTRODUCTION

Despite all the inflammatory rhetoric from front groups controlled by multinational timber corporations,[3] the reality is that environmental organizations have much more in common with individual forest landowners and most foresters and loggers than the timber corporations do. While corporations and their allies decry government "regulations" limiting forestry,[4] the reality is that there is virtually no regulation of the timber industry in the Southern United States at all. Indeed, the biggest threats to forests are the same threats to wildlife, water quality and other environmental interests: the loss of forests and habitat due to (1) unsustainable forestry practices and (2) conversion to farms, pine plantations, strip malls, subdivisions and parking lots. Environmental organizations recognize that the individual forest landowner is usually a friend of the environment, a person who loves and cares for their land. Even a poorly managed forest is better for the environment than another parking lot and mega-mall surrounded by subdivisions. And a well-managed forest is a great environmental asset. Rarely does a landowner make bad decisions for their forests due to greed; usually, it is because of a lack of knowledge about alternatives or about ways that help them protect their land.

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2. HENRY DAVID THOREAU, LIFE WITHOUT PRINCIPLE (1854).

3. Various groups characterize environmentalists as "primary opponents of free enterprise" (Center for the Defense of Free Enterprise, http://www.eskimo.com /~rarnold/opposition.htm), and as radicals who "seek to remove PEOPLE from the environmental equation and to remove humanity from the land, placing us in the concrete jungles only" (American Land Rights Association, http://www.landrights.org/interest.htm). Others declare, without any supporting evidence, that "property owners have frequently found themselves unable to use their property and unable to recover their losses." Statement of Roger Pilon, Ph.D., J.D., Senior Fellow and Director, Center for Constitutional Studies, Cato Institute before the Committee on Environment and Public Works United States Senate (June 27, 1995), *available at* http://www.cato.org/testimony/ct-pe627.html.

4. One web site declares, without any supporting material, that regulating private lands or conserving them in any way means "Natural resources, ie. raw materials become scarce and expensive." http://www.allianceforamerica.org/Position%20Papers%202001.htm. They fail to mention how a lack of conservation leads to market gluts and prices so low that landowners cannot realize a profit from their land, such as the situation with pulpwood prices in late 2002 and early 2003. Pulpwood prices in the South are so low and the market is so glutted, mainly due to any public or private "regulation" that would conserve the resource that many landowners literally cannot give away pulpwood harvested from their lands. Daniel B. Warnell School of Forest Resources, The University of Georgia, *Pine pulpwood prices declined to decade-low levels*, TIMBER MART - SOUTH (October 31, 2002).

The South's forests are the wood fiber basket of the world. As found by the United States Forest Service during the recent Southern Forest Resource Assessment:

> The South produces approximately 60 percent of the nation's timber products, almost all of it from private forests; the South produces more timber than any other single country in the world, and it is projected to remain the dominant producing region for many decades to come.[5]

And that situation is only going to grow larger. It is predicted that softwood and hardwood harvests in the South will increase by 56 and 47 percent, respectively, between 1995 and 2040.[6] Most of the forestlands in the South are owned by private individuals.[7]

While being the major economic player in the world's timber market, private forest lands in the South are also the key to protecting biodiversity and other environmental resources in the eastern United States. While publicly-owned forests are essential for their environmental functions and values, the majority of American forests are privately owned, and despite the vast holdings of forested land by a small number of corporations, a majority of the privately owned forests are owned by individuals. As summarized by the National Research Council:

> America's nonfederal forests are extensive and important. Two-thirds of the nation's forest-land — nearly 490 million acres — are owned and managed

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5. U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 1 (2002).

6. U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 3.3 (2002).

7. The 13 Southern States contain an estimated 215 million acres of forest land. About 201 million acres are classified as timberland. In 1999, an estimated 179 million acres of the South's timberland (89 percent) were in private ownership. Birch (1996) found southern private timberlands to be in 4.9 million tracts owned or controlled by private individuals and legal entities, including corporations, clubs, trusts, partnerships, American Indian tribes, and Native American corporations. More than three-quarters of all private owners owned only one tract. More than two-thirds of these tracts were located <1 mile from owners' residences.

In 1999, about 21 percent (37 million acres) of the South's private timberlands were owned by forest industries. In 1994, forest industries represented <1 percent of all private ownership units (Birch 1996). Although forest industry timberland acreage slowly increased from 1953 until 1989, it declined by about 1 million acres (3 percent) between 1989 and 1999.

In 1994, an estimated 4.7 million individual owners held the largest share of private southern timberland. Individual owners compose the core of the group commonly referred to as NIPF owners (Moulton and Birch 1995). Almost 95 percent of all private timberland owners in the South are in this group (Birch 1996). In 1999, they controlled 63 percent of the total private timberland acreage.U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.1 (2002).

> by nonfederal entities. These owners include: state, county, and tribal governments; corporations; and millions of individual private citizens, including more than nine million who each own fewer than 100 acres. This later group is referred to nonindustrial private forestland owners.... Forest industries own about 71 million acres of forestland, with particularly heavy concentrations in the South.
>
> About 75 percent of the nation's nonfederal forests are located in the eastern part of the nation. Four of 10 acres are in the South, and about one-third of the nonfederal forestland is located in the North. the remaining portion spreads across the western United States, where the dominant landowner is the federal government.[8]

The increasingly important role of all forests in society has been stated this way:

> Sustainable forestry is emerging worldwide because the contexts and conditions of forests are changing at an unprecedented rate and in ways that were never before possible. Long viewed as hinterlands valued primarily for meeting the extractive needs of societies, or as preserves of wilderness, forests are now mainstream concerns in the United States and throughout most of the world. Increasingly, forests are recognized as pervasive and crucial features of the social landscape that supply fundamental human needs for wood, paper, water, food, jobs, medicines, minerals and energy. They form watersheds, agricultural systems, and reservoirs of genes, species, and ecosystems; and they regulate climate. In the process they distribute resources and services among groups, communities, and nations. In this new context, people have come to view forests as critically scarce systems within the bounds of direct human interest rather than as abundant resources beyond those limits.[9]

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8. NATIONAL RESEARCH COUNCIL, FORESTED LANDSCAPES IN PERSPECTIVE: PROSPECTS AND OPPORTUNITIES FOR SUSTAINABLE MANAGEMENT OF AMERICA'S NONFEDERAL FORESTS 1 (National Academy Press 1998) [hereinafter FORESTED LANDSCAPES IN PERSPECTIVE].

9. JENKINS & SMITH, THE BUSINESS OF SUSTAINABLE FORESTRY: STRATEGIES FOR AN

Thus, private forestlands in the United States are essential for protection of the environment. It is vital that private forest landowners learn more about options for forest management that will provide them with the economic returns they desire while protecting the environmental values the public and the landowners both need.

Federal forestlands must be managed according to a host of federal laws and regulations, and thus environmentalists can use the courts to ensure that management is done properly when agencies will not do so of their own accord. But private forest lands do not have nearly so many laws and regulations applicable to them, and forcing private landowners to manage their lands in a particular way is simply not possible. The most laws can do on private forestlands is set outside limits on what landowners can do, such as not allowing them to build a toxic waste dump next to a school or adhere to minimum standards for protecting water quality Laws on private lands prohibit bad things, but they do not and cannot mandate good things. For private landowners, the personal desire to manage land well is the key factor, but for that desire to become reality, the landowner must be provided good information and an honest range of options so that they can choose the management methods and techniques that meet their needs and best fit with their land. The landowner must also be provided the incentives and the resources to make good forest management a reality. Society cannot just expect the private landowner to do the best thing, and private landowners cannot just expect society to provide for them, either environmentally or economically. We all bear responsibility for making our world the best it can be. As stated by the National Research Council:

> Sustainable management of the nation's nonfederal forests is important because nonfederal forests are an important part of the nation's economic, community and environmental landscape. Expectations for the human and ecological benefits these forests are capable of providing are growing. If these expectations are to be met in a sustainable manner, greater financial and human investments in these nationally important forests must be made.[10]

INDUSTRY IN TRANSITION 11 (Island Press 1999).

10. FORESTED LANDSCAPES IN PERSPECTIVE, *supra* note 8, at 21.

While government can play some role in informing landowners and encouraging better and more sustainable management, its role is ultimately limited. If private forestlands are to managed sustainably and protected from conversion into subdivisions, the energy for such an advancement must come from the landowners and from those who are concerned about the ecological values of the land.

What is needed is for private landowners, consulting foresters, loggers and people with environmental concerns to begin a better and deeper dialogue in order to learn from one another and to help each other achieve their goals. What we will find when we talk together instead of attacking each other for narrow political reasons is that we have a great deal in common. The goals of most environmentalists can be met while meeting the goals of most private forest owners and forestry practitioners. Good stewards of private land produce good environmental results. Good environmental practices produce good economic results for private landowners.

II. BAD LOGGING HURTS PRIVATE LANDS AND PUBLIC LANDS

Why do so many logging operations damage the very land that is harvested? Simply put, the large multinational corporations that drive the world timber and paper pulp markets demand that fiber be provided to them in the most efficient and profitable manner, for them. Massive cut-and-run clearcutting is the best way to get trees off land quickly and into the hands of large pulp and timber corporations, but it is not the best way for an individual landowner to make money and maintain the integrity of their land. Industrial harvesting methods, such as clearcutting, cause great damage to land, wildlife, water quality and scenic beauty. Clearcutting done wrong can also destroy a landowner's future chances of making good money from that land. More than 2,000,000 acres are clearcut every year in the South.[11]

Irresponsible logging practices on private lands can also adversely impact public forests. Bad clearcuts in the year 2000 on inholdings in the middle of the Bankhead National Forest in northwestern Alabama caused major damage to streams on the public land below. Every bit of sediment that ran off those clearcuts went into streams on public land, streams that are home to a number of endangered species. Thus, learning about better ways to manage forests can lead a landowner to being a better neighbor, both to other landowners and to the public at large.

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11. U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.1 (2002).

When timber harvesting is not done in a responsible manner, the land and people suffer. Streams can be choked with sediment; wildlife can be killed. Neighboring landowners can have their lands and waters degraded and their property values diminished. The landowner whose forest is mangled through bad forestry practices suffers the most, losing soils, productivity, wildlife, the beauty of their land, and even future revenues. Also, WildLaw has represented landowners in trespass and nuisance cases against their upstream neighbors who allowed sediment to flow downstream due to bad forestry practices. Being hit with a six-figure jury verdict because the forester and loggers you hired did a bad job is no way to make money off one's forest.

But when landowners have more information about their choices, they can make better decisions about forest management and avoid the problems that come when improper methods are forced on them. Landowners can decide to manage their land in a way that maximizes revenue for them (as opposed to maximizing revenue for corporations) while also protecting the soils, wildlife, water and beauty that makes that land special to them. Making sure that Best Management Practices (BMPs) are always followed in timber harvesting can dramatically improve even clearcutting.[12] Methods such as selective logging can provide great revenue from sawtimber without ever removing the majority of the trees from the forest. Landowners who cut selectively and who wisely chose to take their timber to a quality sawmill have made more money from their land than neighbors who clearcut and just sold the trees for pulp to the nearest multinational pulp mill and protect and maintain their forest at the same time.[13]

Sustainable forests come from knowledge and landowner care, and smart choices about forestry methods require research. A group called the Sustainable Forests Alliance[14] seeks to aid

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12. Forestry operations have been identified as nonpoint sources of pollution to water bodies draining forest land. Silvicultural activities have the potential to increase sedimentation and alter stream channel conditions (National Council for Air and Stream Improvement 1994). Impacts from these activities are site-specific, varying across the South. Effects depend on elevation, slope, and the rate at which vegetation recovers following harvest. However, in general, if BMPs are properly designed and implemented, the adverse effects of forestry activities on hydrologic response, sediment delivery, stream temperature, dissolved oxygen, and concentrations of nutrients and pesticides can be minimized.
U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5 (2002).

13. "Research conducted by Beasley and Granillo (1985) demonstrated that selective cutting generated lower water yields and sediment yields than did clearcutting. Selective cutting resulted in sediment yields 2.5 to 20 times less and water yields 1.3 to 2.6 times less than those resulting from clearcutting." U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 4.8 (2002).

14. More information about this group is available at www.southernsustainableforests.org.

landowners in making intelligent choices about how to manage their forests for now and for future generations to come. Other environmental organizations from around the country also work to assist private land owners to make their lands as productive and sustainable as they can be.

III. INDUSTRIAL LOGGING: THE PROBLEM

Industrial logging practices are not designed to benefit private landowners; they are not designed to protect forest lands. Industrial logging practices are designed to benefit the timber and pulp industry by getting trees off the land and into the mills as quickly and cheaply as possible. The huge multinational timber corporations are not concerned with whether the forest landowner makes as much money from their land as they could have or even whether the forest landowner's land is still viable after logging. The corporations' concerns are maximizing next quarter's profits and driving up share prices.

Industry has huge investments in facilities and processes that are designed for mass manufacturing of consumable goods. Their goal is maximizing short-term profits. People who make unique products from wood also suffer when forests are not managed sustainably, as the multinational corporations absorb so much of the available timber. A typical paper mill is a tree-consuming machine, being fed by logging from many thousands of acres of each year.

When forest land is logged recklessly just to maximize timber and pulp production in the present, the land suffers over the long term. Wildlife, biodiversity, water quality, air quality, and scenic beauty all suffer as well. The forest landowner also suffers by not realizing the maximum economic return from their land and from the loss of all the non-economic values and resources that make a person's land mean much more to them than just property.

When land is treated as nothing but industrial resources and forests are managed merely as commodities, the environment and the private landowner both suffer. Industrial demand for cheap fiber has caused massive clearcutting of southern forests. Instead of trees being allowed to mature and provide valuable sawtimber for local sawmills, forests are clearcut young and fed into chip mills. The chips are then shipped overseas to be made into paper and other products there. Value-added jobs are lost. Studies show that for every one job created by clearcutting and chip mill use of the timber, as many as 40 jobs in the cabinet and furniture industries here in America are lost. This industrial row cropping of trees has also driven prices for timber to new lows, thus forcing many small

operators, family sawmills and private landowners into selling out to the multinational corporations cheaply. Causing a world glut of timber fiber benefits the multinational corporations by allowing them to buy up small competitors and timber at prices that allow them to consolidate power over the timber market. Doing business on a global scale, these corporations do not care if their practices cause harm to a regional economy.

IV. LAND IS MORE THAN JUST PROPERTY AND FORESTS ARE MORE THAN JUST TIMBER

Individual landowners realize these truths. Local sawmills that produce the lumber than gets turned into products locally also know these things. Multinational corporations do not. Unfortunately, the private forest landowner often gets "advice" about how to manage their land only from those corporations and people who have a vested interest in the global timber market. Corporations and the foresters who work for the industry usually do not provide forest landowners information about real alternatives to industrial logging practices and do not give them assistance with long-term protection of their land. Environmental coalitions like the Sustainable Forests Alliance do provide such information to landowners.

Massive soil and water quality damage can be caused by log skidders and trucks when proper Best Management Practices (BMPs) are not followed. In most southern states, BMPs are not required; they are entirely voluntary, except for certain minor requirements mandated by the United States Army Corps of Engineers related to filling of wetlands.[15] Following BMPs and

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15. BMP implementation is largely voluntary in Southern States, but three States (Florida, North Carolina, and Virginia) have linked BMP implementation to other State regulatory programs, making them quasi-regulatory in some circumstances, and BMP implementation became mandatory in Kentucky in July 2000. There are also 15 mandatory Federal BMPs, or conditions, required in all States for exemption of certain silvicultural activities conducted in waters of the United States.... Compliance with these Federal conditions has not been systematically monitored by any agency.

U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.4 (2002).

For a comparison of all state laws on forestry in the South, *see* http://www.southernsustainableforests.org/laws.html. As an example, Alabama's BMPs are quite good in their recommendations, but as stated by the Alabama Forestry Commission:

> Alabama's Best Management Practices for Forestry are non-regulatory guidelines (except for the U.S. Army Corps of Engineer's baseline BMPs on pages 16 and 17 which are mandatory) suggested to help Alabama's forestry community maintain and protect the physical, chemical and biological integrity of waters of the state as required by the Federal Water Pollution Control Act, the Alabama Water Pollution Control Act, the Clean Water Act, the Water Quality Act and the Coastal Zone Management Act.

http://www.forestry.state.al.us/bmps_table_of_content.htm. Alabama's BMPs can be found

protecting the soil and water quality during timbering operations costs more money than just cutting all the trees and hauling them out as fast as possible. Thus, a good landowner who follows BMPs because he wants to protect his land and the water quality of the stream below it is put at a competitive disadvantage with the bad landowner who ignores BMPs and cuts for maximum short-term profit. With even a small amount of concern, foresight and planning, damage can easily be avoided. But large corporations that log private land are often not interested in sustainability but in maximizing the next quarterly report's profit margin.

Skid trails can cause erosion, even many months (and even years) after the area was logged, and act as funnels sending sediment down into the streams below. Such damage could be prevented while still harvesting virtually the same amount of timber off of a tract if the landowner, forester and logging operators took more care in designing and implementing the logging operation.

Landowners who are not given options are often talked into having their land clearcut and replant into a monoculture; in the South that means rows of loblolly pines. Currently, 24 percent of Alabama's forests are in loblolly pine plantations.[16] The U.S. Forest Service predicts that by 2040, 25 percent of all southern forests will be pine plantation monocultures. As that agency stated:

> Private landowners in the South are projected to continuously expand areas of pine plantations in the region far into the future. An outcome of this is a projected increase in the area of pine plantations – in the base scenario, by 67 percent (from 33 to 54 million acres) between 1995 and 2040.[17]

These tree farms are no longer forests in any sense of the word. They are farms, crops, and nothing else. Wildlife suffers when natural forests are replaced with plantations or development. An exposé on the conversion of healthy natural forests into pine monocultures can be found in an article by Ted Williams in the

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at http://www.forestry.state.al.us/publication/BMPs/BMPs.pdf.

16. Planted pine may surpass natural pine in these States [Louisiana and Virginia] in the near future, as was recently witnessed in Alabama (Hartsell and Brown 2002) and South Carolina (Conner and Sheffield 2001b). The just-released inventory results revealed that pine plantation acreage has now surpassed the area of natural pine by 1.1 million acres in Alabama and by 130,000 acres in South Carolina.

U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.5 (2002).

17. U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 1 (2002).

May/June 2000 issue of Mother Jones magazine. As stated by Mr. Williams:

> Since mechanized forest removal became de rigueur in the 1960s, the industry has been excusing itself with ads that begin: 'Clearcuts may seem ugly at first....' As I gain the brow of the hill, I have to agree. But here, on this frozen, snag-littered mud flow salted with land snails roasted white, there is something even uglier — a greener, more insidious threat to the environment apparent in the freshly planted pine seedlings that barely make it to my boot tops. Directly to my left, a rectangular plantation almost ready for harvest stretches to the next hollow like a roll of teased Astroturf. The plantation to my right is maybe two years old and just greening up. For miles in all directions, the earth is clad in genetically identical, genetically "superior" specimens of loblolly jammed into the dirt in straight rows — trees the timber industry calls 'vigorous' and 'thrifty,' all goose-stepping their way to harvestable diameter.
>
> There is no genuine forest in sight, save a relict scrap to the north that contains hardwoods: oak, beech, dogwood, ash, sweet gum, magnolia, yellow poplar, hickory, cherry, and maple. It is a reservoir for wildlife, but also for what companies like Champion seek to correct — 'deadwood, decadence, and disorder.' With a pine plantation, the forest has not only been removed, it has been prevented. Countless species of insects, arachnids, mollusks, amphibians, reptiles, birds, and mammals -- each as much a part of a forest as a tree -- are gone because the diverse vegetation on which they depend is gone. E.O. Wilson, a Harvard biologist and Pulitzer Prize winner, estimates that a pine plantation contains 90 to 95 percent fewer species than the forest that preceded it. He compares the effects of tree farms on biological diversity to 'building a line of Wal-Marts.'
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> Over the past decade, tree farms have certainly proliferated like discount chains. The U.S. Forest Service estimates that plantations now make up 36

> percent of all pine stands in the South and within 20 years will make up 70 percent. Like other industries, pine farming has migrated to the region for its mild climate, cheap labor, and low taxes. Trees grow more quickly here, and they cost less to plant, tend, and harvest. What's more, most of the pine conversion is taking place on private land, where regulation is virtually nonexistent. More than half of evergreens harvested in the U.S. come from the South, making it the world's largest pulpwood producer.[18]

Clearcutting for conversion to pine plantation exposes the soil and causes great loss of nutrients and soil microbes that make the whole forest ecosystem work. This conversion of natural forests into plantations is devastating to the environment[19] and can be devastating to the landowner as well. What was once a diverse and beautiful landscape capable of producing steady income forever is reduced to a farm that will not produce a dollar to its owners for decades to come. Of course, getting any income at all from a monoculture plantations assumes a big gamble that the packed pines survive attacks from southern pine beetles, wind storms, ice storms and more for decades. Such natural "disasters" are all things that have little impact on a natural and diverse forest, as diversity enables a natural forest to withstand such impacts well.

Pine plantation conversion also hurts communities far beyond the actual tract of land that is converted. As Ted Williams wrote:

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18. Ted Williams, *False Forests,* MOTHER JONES 72, 73-74 (May/June 2000), *available at* http:// www.motherjones.com/mother_jones/MJ00/false_forests.html.

19. Plantations produce more growing-stock volume than natural stands in relation to the standing volume. Natural stands tend to have a greater variety of species, especially hardwoods, and have larger diameter distributions.

Rosson (1999) found similar results in a 30-year study of Arkansas and Mississippi. He used FIA data that covered three decades (four measurement periods) and over 2,500 plots per measurement period to investigate the effects of pine plantations on species richness and species evenness for an entire State. Species richness for the study was defined as the number of species found on a sample plot. The study showed that pine plantations had a notable impact on tree species richness at the State level. In this study, Arkansas plantations had 14.1 percent lower species richness, and Mississippi plantations had 28.9 percent lower species richness than natural stands. Rosson reported that tree species richness declines as plantations replace harvested natural stands. Plots that had harvesting activity over the same study period experienced increases in tree species richness. Species richness on non-harvested plots increased 21.6 percent in Arkansas and 43.8 percent in Mississippi over the 30-year period.

U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.11 (2002).

What the companies neglect to mention is that pine farming, like other large-scale, industrial agriculture, harms the environment and the economy. Pine plantations require enormous amounts of fertilizer and herbicide, much of which winds up in streams and drinking water. They impoverish soil and destroy habitat, including wetlands. And they rob communities of valuable sawtimber for lumber and of real forests that produce clean water and provide recreation. Few of the profits end up in local communities, and many of the companies are multinational. Champion, for example, is owned by a firm based in Helsinki.

Alabama is particularly generous to pine converters. Among the benefits bestowed by the state is a tax exemption on almost $4 billion worth of timberland – an arrangement that, together with other tax breaks, deprives public schools of an estimated $50 million per year. So pine conversion is being underwritten in part by the future enlightenment and earning potential of Alabama's children. An Auburn University study reveals that rural counties most dependent on the forest-products industry have the highest levels of unemployment, poverty, and infant mortality. They also spend $200 less per student for public education than rural counties less reliant on timber. Tax revenue that would have gone to schools and other social services goes instead for such industry accommodations as road maintenance for fleets of logging trucks.

Another hidden cost of pine conversion is that young hardwood trees are ground into chips before they have a chance to mature into valuable sawtimber. Unlike Western logging, which is often conducted on public land, pine conversion happens mostly on private property where regulations are lax or nonexistent. Foresters for companies like Champion routinely pass out free seedlings and free advice to landowners, encouraging them to sell their timber before it matures and to 'reforest' with loblolly. The landowner gets quick cash, the company gets wood for chips, and workers at local sawmills

> get laid off. Lamar Marshall, director of Wild Alabama, one of the state's largest and most active environmental groups, showed me the results of this system as we toured the countryside in his truck. 'Look there,' he exclaimed as we passed someone's back 40, a once-diverse woodlot replaced by a monotonous expanse of young pine. 'If the forester isn't real ethical, he'll cut every stick of hardwood for chips. He'll pay $5 for a red oak, which might have been worth $50 or $75 in five years.' All trees look the same by the time a Japanese fax machine spits them into the holding tray.[20]

Another threat to private forest lands is the use of forests for biomass energy production; this is currently a small but fast-growing problem. Large corporations are advocating that the current manufactured "energy crisis" be addressed, in part, by using biomass energy. Biomass is the removal of all living things from a tract of land and converting that biomass into pellets or chips which are fed into a boiler to produce steam to power electric turbines. This process literally vacuums all plant matter off a piece of land, making it even more devastating that clearcutting. While some limited biomass energy production is currently fueled by biomass from private lands, there are proposals to start using the National Forests (especially those in the West, like in California) to produce biomass energy.

What makes the conversion of natural forests into pine plantations so particularly tragic for Alabama is that Alabama's forests and waterways once supported the most diverse biodiversity anywhere in the continental United States. Half of all known extinctions in the continental U.S. since white settlement have occurred in Alabama. Alabama has experienced more extinctions than any other state in the lower 48, almost twice as many as the number two state, and more than 25% of its remaining 3,800 species are in danger of extinction As stated in the *Nature Conservancy* magazine, Alabama is "America's monster of biological diversity," and "is lately drawing comparisons to the legendary treasures of the tropics."[21]

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20. Williams, *supra* note 18, at 74-76.
21. *Nature Conservancy* (Sept./Oct. 1997).

V. THE REAL PROBLEMS FACING FOREST LANDOWNERS

Front groups for the multinational timber interests often claim falsely that environmentalists are coming for private land and want to take it away. They love to scare landowners with horror tales of environmentalists pushing laws that take away private property rights. Of course, when pressed for details and facts, these anti-environmental groups and the industry can almost never provide them, except for a few anecdotal stories, most of which can never be independently verified. Yes, environmental laws and regulations (just like tax laws, drug laws, speeding laws, and every other form of law) can occasionally cause harm to private rights, and such instances need to be corrected and compensated. One can find isolated instances of seat belts actually making injuries worse during a car accident, but should we get rid of all seat belts because of that? Just as the fact that seat belts make things worse in an accident on rare occasions does not negate the reality that the vast majority of time they make things better, so too rare problems with environmental laws do not mean we should abandon all the good they do.

The reality is that every study done on the issue shows conclusively that environmental laws and regulations do not cause broad adverse economic impacts. Research into the impact of environmental laws has shown that these laws have no detectible adverse impact on the national economy or on the economy of any state.[22] These laws do have some occasional real impacts on the local scale, but in the vast majority of instances, these laws amount to nothing more than an additional cost of business such as compliance with labor laws, zoning requirements, engineering requirements, etcetera. Just as people do not want ten-year-old children working 16-hour days in factories, they do not want their children breathing unclean air. Environmental laws in general are not "unnecessary and excessive" regulations and limitations on the free market and private property; society has legitimate interests in limiting anything that conflicts with the values of society, whether it be child labor or toxic pollution, just so long as those limits do not infringe on constitutionally protected rights.

Indeed, to "prove" their case that environmentalists are "bad," anti-environmental groups have to make things up, sometimes going so far as to create false web sites claiming to be the web sites of environmental groups. A prime example was the web site www.wildlandsproject.org, which was a site set up by an anti-

22. Dr. Stephen Meyer, *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypotesis*, MASS. INST. OF TECH. (Oct. 5, 1992).

environmental group and which masqueraded as the web site of The Wildlands Project, a scientifically-based organization showing what is possible in protecting and restoring wildlands and biodiversity. The real web site of The Wildlands Project was www.twp.org. Whenever opponents of good land management wanted to scare people, they told them "environmentalists want to take your land away; go look at the web site of The Wildlands Project," and then give them the address of the false site. The Wildlands Project does not advocate taking people's private property away. It sets forth idealistic but scientifically-sound visions of what a biologically-recovered North America might look like (after all, you cannot know you are making progress in any area unless you have a vision of what the final goal is), but nowhere does the organization call for those visions to be forced on anyone. But the false web site took logos and materials from the real web site and changed them to make things appear "bad."

For years, the false web site was a form of "cyber-sqatting" that led many people to believe false things about The Wildlands Project, such as that they wanted to force people off the land and "lock it up." After an appeal by The Wildlands Project to use the Uniform Domain Name Dispute Resolution Policy adopted by the Internet Corporation for Assigned Names and Numbers (ICANN), an Internet governing body, the false site was given up, and The Wildlands Project took that domain name over.

What the timber industry and their front groups are up to is scaring landowners into listening only to the industry, so that landowners will do what industry tells them to do, even if that is not what is best for the landowner. Making environmentalists into boogeymen is a way for industry to keep landowners from learning about different ways of managing their land and to keep them from making their own decisions about their land.

What is ironic is that it is very true that there are people who desire to take private forestlands away from their owners, but those people are not environmental organizations. While the timber industry tries to demonize environmentalists, they never inform landowners about people who really do want to take away forestlands and destroy their forests, by developing them.

Huge areas of American forest land are lost each year to development. Fore example, Florida has lost the most timberland in the South, primarily due to urbanization. Since 1953, timberland area in Florida has declined 19 percent to less than 15 million acres in 1999.[23] Even forests that are not converted to urban or suburban

23. U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.2 (2002).

land are fragmented by the development that occurs around and near them.[24] This fragmentation is bad for the general environment and bad for the health of private forests. Recent studies show that in the United States 1.5 million acres of private forest land are fragmented each year by development pressures and another 1.2 million acres are converted and lost forever to development.

Even if an individual does not sell his forest to developers, if his land gets surrounded or even encroached upon by development, the taxes on his land can rise dramatically, making it harder for him to keep his land. Indirect effects from the development can cause damage to his land through many impacts such as erosion, sediment runoff, pollution of both air and water, driving off of wildlife and many more.

Uncontrolled sprawl eats into private forests at an alarming rate. A recent conference of experts on forest fragmentation made some disturbing findings. The conference was "FRAGMENTATION 2000- A Conference on Sustaining Private Forests in the 21st Century," and it was held September 17-20, 2000, in Annapolis, Maryland.[25] Some of the major findings of the conference were:

> 1. Fragmentation rates are increasing faster than population growth. Development-supporting economies keep expanding out over the landscape, replacing forest-and-farm-supporting economies. 2. A 'bow wave effect' extends far in front of expanding development. It raises land prices, taxes, social and regulatory pressures that discriminate against rural land uses well before a development rush. 3. Subsidized development demands subsidized services, which increases demand for more development... Most residential development costs government more in services than it pays in taxes. 4. Plants and animals thriving on edge-and-disturbance effects

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24. Currently, strong economic growth has led to increased urbanization in parts of the South. Urbanization fragments the natural landscape, destroys habitat required for many species, modifies habitat for others, and creates new habitat for some species (Adams 1994). This land use shift will continue to influence the region"s forests along with forest wildlife and habitat. Recent patterns of urban growth in the South have moved more people into the historically rural areas in low-density residential developments. In some areas of the South, forest cover remains relatively high, but the landscape is highly fragmented. Land use changes that result in increased forest fragmentation could have negative impacts on a number of forest wildlife species, including many mature forest and early successional bird species.

U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 2.2 (2002).

25. The summary report of the Forest Fragmentation 2000 Conference is available at http://www.sampsongroup.com/acrobat/fragsum.pdf.

expand; those needing large undisturbed expanses decline. 5. Exotics and invasive weeds replace native systems. Vulnerability to insects and diseases increases. Plantings at developed sites create 67% of the invasive exotics in the U.S. according to Alavalapati. 6. Timber harvests 'go terminal' in and near developed areas. One last cut is made in preparation for development; then the infrastructures and economic incentives helping keep land in forests disappear. Since this is not accompanied by a reduction in U.S. demand for forest products, imports rise, driving up harvests outside the area while local forests are unused.

FRAGMENTATION RATES ARE INCREASING FASTER THAN POPULATION GROWTH — From 1945 up to 1992 each new person added to the U.S. population caused the conversion of about half an acre of undeveloped land to urban uses. The rate more than doubled between 1992 and 1997 as each new person added to the population converted 1.2 acres of undeveloped land to urban uses. About 40% of the land used is forested, meaning that each new person converted .22 acres of forest prior to 1992 and converts about .50 acres now.

Death and taxes: people who inherit valuable land are forced to subdivide it to pay taxes. People who are 65 and older hold 48% of all private timberland acres, meaning that land keeps getting divided among heirs. Owners of high-value land who haven't made complex legal tax-avoidance arrangements before dying leave their heirs with the problem of being forced into selling land and timber to pay high estate taxes. According to Greene and others, the number and percent of estates owing federal estate tax has risen in recent years. At the same time, increased stumpage prices and urban expansion have driven up the value of both the timber and land components of forestland, pushing more land into higher brackets. Greene estimates that there are presently about 87,000 forest estate transfers annually. Ownerships forced to sell timber or land to pay the federal estate tax range from

> under 100 acres to several thousand acres of forestland, and average over 500 acres.
>
> The South is the next most densely populated region and very heavily forested. It contains 50% of the nation's private timberland. The population is growing rapidly, creating massive expansions of urban areas. Between 1960 and 1990, the South's share of the U.S. population increased by about 3%, but the amount of southern land covered by metropolitan areas more than doubled, increasing from about 10% to more than 23%. Florida is gaining population at the rate of nearly 900 people per day, decreasing timberland from 19.7 million acres in 1936 to 14.7 million acres in 1995 This is expected to increase, creating significant negative impacts on the environment and the economy. Georgia has the most timberland of any state in the country but also now ranks third in the annual rate of development (USDA FS 1999. US Department of Commerce, 1992). American forest industries have been concentrating in the south in recent decades because of the region's highly productive private forests, but many of those same forests are now under fragmentation pressure as urbanization increases.[26]

Another threat to private forest lands is their conversion into much more damaging resource extraction. Coal strip mining continues in many areas. The road and building construction industries need huge amounts of crushed stone, but it is rarely economical to ship such rock long distances. Therefore, the rock industry tries to develop rock quarries near places that are experiencing growth. What this means is that even if a landowner's forest is not itself lost to nearby development, it could be lost to a quarry that supports the development. WildLaw is currently representing community organizations involving hundreds of landowners fighting four rock quarries (two for limestone and two for granite) in Lee and Elmore Counties in Alabama.

What this shows is that the major real threat to private forest landowners is not environmentalists and reasonable government regulations but the very loss of their forests to development and

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26. SUMMARY REPORT OF THE FRAGMENTATION 2000 CONFERENCE ON SUSTAINING PRIVATE FORESTS IN THE 21ST CENTURY, *available at* http://www.sampsongroup.com/acrobat/fragsum.pdf.

resource extraction that forever eliminates the forest. In facing this threat, the timber industry is useless to the individual private landowner, because the industry is not interested in what happens to individually-owned forest land. The industrial timber corporations want logs, and they will happily buy and process logs cut off land slated to be converting into a strip mall as from anywhere else. But in facing this ultimate threat to private forest land, environmental organizations are uniquely situated to help land owners. Indeed, environmentalists have spent decades learning how to oppose poorly planned development and mines.

A unique aspect of when private forest owners come into contact with the real threat of development is how they often embrace the very environmental laws and regulations that timber industry front men have told them are out to get them. For example, industry groups rail against the Endangered Species Act (ESA),[27] claiming that the ESA will prevent a landowner from realizing any revenue from his land.[28] But the reality is that a tract of private forest with an endangered species is a rare thing, and if the species is there, that usually means that the landowner's preferred way of managing his land is compatible, even good, for the species, or else it would not normally be there. When threatened with suburban development, a forest with an endangered species can usually continue as a working forest but it cannot legally be converted into pavement. Thus, the forest landowner can find that the ESA will defend not just rare species but also his very land. I have personally had dozens of landowners approach me and ask if I could please find an endangered species on their land. Why? Because their land was being threatened with encroaching development or mines. Of course, I could not magically put an endangered species on land that did not already have them. But the lesson is that when the real threat to private landowners appears, they instinctively realize that what they had been told was the threat is instead their hope of salvation.

Indeed, WildLaw has helped hundreds of private landowners defend their land from takings by corporations that have been given the power of eminent domain. Industry front groups that spent years telling these very same landowners that environmentalists and environmental laws would take their land from them never raised a finger to help these people when industry (not government) came to take their land away for a pipeline, a power line, a road or whatever. Instead, it was the environmentalists using the

27. 16 U.S.C. §§ 1531 et seq.

28. For an example, see the web site for the Alliance for America, http://www.allianceforamerica.org/Position%20Papers%202001.htm#Endangered%20Species.

environmental laws and regulations who came to the defense of these private landowners.

Unfortunately, due to the overwhelming power of the eminent domain given to corporations, we were unable to keep the majority of the lands from being taken, but we did prevent some takings. And those private lands that were spared in the cases WildLaw brought for private landowners were spared because environmental laws such as the ESA forced the corporation doing the taking to modify its plans and avoid certain lands.

Throughout the South, there is virtually no legal protection for private property rights. There is a fallacy propounded by industry front groups that if environmental regulations are weak, then private property rights are strongly protected. The opposite is true; a state that does not value the environment also does not value private property (of individuals anyway). Corporations have the right to take people's property from them any time they want, all without having to show any public purpose.[29] Corporations even have more powers of eminent domain than the State does. A corporation can take your land for their private economic gain, something the State itself cannot do..

What companies can take private land? In Alabama, the list includes railroads;[30] electric utilities and power lines;[31] dam builders, pipeline companies, telephone companies, bridges or canals;[32] mining companies,[33] and any other work of internal improvement or public utility.[34] These companies can go onto anyone's land, survey, dig and do other things, all without the landowner's permission.[35]

Alabama's Supreme Court has actually ruled that corporations can pollute private land and have no liability for that unless the landowner can prove with nearly perfect evidence exactly when the contamination happened and how much it was.[36] In Alabama at least, companies can effectively take private property away and render it less valuable or even useless and owe the landowner nothing for that privilege.. Under current state laws, the Alabama Legislature and Alabama's courts have basically enshrined a "right to pollute" for big corporations. But people and private landowners have no right to clean air, clean water, or a healthy environment.

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29. ALA. CODE § 10-5-1 (1975).
30. *Id.* at § 10-5-2.
31. *Id.* at § 10-5-1.
32. *Id.*
33. *Id.* at § 10-5-3.
34. *Id.* at § 10-5-1.
35. *Id.* at § 10-5-8.
36. Russell Corp. v. Sullivan, 790 So. 2d 940 (Ala. 2001).

Due to this incredible bias in the law toward large corporate interests and against private landowners and citizens, it is imperative that forest landowners work with other people interested in protecting the land and find solutions that they can implement on their own.

VI. MOVING TOWARD SUSTAINABLE FORESTRY

Chris Maser discussed some causes of trouble in the forestry profession:

> Ignorance might be excused in the absence of information, but to act in defiance of documented knowledge is inexcusable. The forestry profession is in trouble because of the resistance of many traditionally educated foresters to alter their thinking in terms of the world today. Five major causes of trouble in the profession of forestry are (1) the economic myth of forestry, (2) dogmatization of forestry, (3) limitations of science, (4) informed denial, and (5) university training.[37]

Many of the problems that result from industrial forest practices come from the knowing refusal of the forestry profession to admit that forests are more than trees. The incredible dynamics of water, soil, soil organisms, wildlife and all forest plants are complex, difficult to predict and impossible to reduce fully to simplistic economic terms. Taking into consideration what is a forest and what it takes to wring economic benefits from a forest without damaging or even destroying that forest can get in the way of "getting the cut" out. Maximizing long-term economic benefits from forest land demands that the totality of the forest and its needs be taken into account, but maximizing short-term profits requires only that one turn a blind eye to reality and just cut trees as fast as possible. As stated in one book:

> Trees are only part of a forest. The monoculturalist, who wants to centralize control and standardize methods, requires no place-specific wisdom, does not recognize that it exists, and instead practices on abstract theories and piecemeal information. The monoculturalist relies primarily on imposing his or her will on the land and forest to control it, taking

37. MASER, *supra* note 1, at 78-79.

> over its evolutionary destiny to replace it with plantation trees in cornlike rows.[38]

A landowner usually knows their land better than anyone. To turn that land over to the industrial foresters of huge corporations that care only about short-term profit is to take a special place and have it ground down into somewhere just like a million other places. It is like a great family cook who wants to open a restaurant being forced to open a McDonald's and cook their food just like it is cooked everywhere else. To ignore the unique aspects and values of a piece of land is the surest way to degrade and devalue that land. Thus, a landowner must insure that they operate with more knowledge than what is parceled out to them by the timber industry, state agencies and state forestry schools if that landowner wants to protect and preserve the things about their land that they care about.

Examples of smart, sustainable forestry that makes money are available. The Pioneer Forest[39] in Missouri has been managing more than 160,000 acres of hardwood forest through selective logging practices only for more than 50 years and making plenty of money doing it. The more than half a century of work on the Pioneer Forest has shown that, thinking long-term, sustainable forestry makes more money for the landowner than the industry-standard clearcut logging.

A good example of a vital forest component that is totally ignored by traditional forestry is the insect. Industry foresters lament long and loud about insects that damage tree crops, but they do not seem to realize that the very timber practices they use are the root cause of the insect outbreaks that plague them. Or if they do realize it, they dare not speak that truth for fear of being out of favor with the giant timber industry that drives forestry and most forestry jobs. As stated by Chris Maser:

> The implications of 'homogenizing' forested landscapes as related to insect activity are interesting and instructive, but seldom discussed in the classroom. Taking a landscape of diverse, native forest and homogenizing it through clearcutting and planting single-species monocultural plantations has the effect of eliminating predators and such physical barriers to insect dispersal as fire-maintained

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38. ECOFORESTRY: THE ART AND SCIENCE OF SUSTAINABLE FOREST USE 270 (Alan Drengson & Duncan Taylor, eds., New Society Publishers 1997).

39. More information about this organization is available at http://www.pioneerforest.com.

> habitat diversity. Loss of such habitat diversity increases both the survival of forest-damaging insects and the likelihood of regionwide outbreaks.[40]

The implications for the massive build-up of pine plantation monocultures in the South are severe:

> By designing a forest based largely on a single-species short rotation that is intensively managed, we are grossly simplifying forest systems. We are speeding up early successional stages as much as possible and liquidating mature and old-growth stages. We are eliminating snags and large down woody material over time as we emphasize short-term economic expediency instead of sustainable forest diversity and stability. Intensively managed stands have little or no wood in the system.[41]

Indeed, by turning forests into yet another agricultural crop, we may well be destroying the very things that make the economically desirable timber from forests possible.

> A biologically sustainable forest is a prerequisite for a biologically sustainable yield (harvest). A biologically sustainable yield is a prerequisite for an economically sustainable industry. An economically sustainable industry is a prerequisite for an economically sustainable economy, which, finally, is a prerequisite for an economically sustainable society.
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> We are not headed toward sustainable forestry because plantation managers rather than foresters are being trained. A forester manages a forest. Forests are being liquidated and replaced with short-rotation plantations. We will have foresters only when we have sustainable forests in which we manage not just trees, but the constantly changing processes.[42]

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40. MASER, *supra* note 1, at 84.
41. *Id.* at 185.
42. *Id.* at 199.

What is "sustainable forestry"? Chris Maser provides a good description of not only what is sustainable forestry but why we need it:

> Liquidating old-growth forests is not forestry; it is simply spending our inheritance and stealing from our children. Nor is planting a monoculture forestry; it is simply plantation management, which more often than not is what we are practicing. Industry is trying very hard to make a gigantic, monotypic plantation out of most of the forested lands of the United States. In fact, the timber industry seems to be trying exceedingly hard to make plantations whenever and wherever they can anywhere in the world. We will practice 'forestry' only when we begin to see the forest and begin to restore its health and integrity – sustainable forestry. Sustainable forestry if the only true forestry. Sustainable means that the whole is greater than the sum of its parts. Forestry in this sense is scientific knowledge guided by a land ethic or ethos in its application to the art and business of manipulating the forested portion of the ecosystem in a manner that assures the maintenance and sustainability of biological diversity and ecological productivity throughout the centuries. The outcome of such forestry will be the perpetual production of amenities, services, and goods for human use.
>
> In sustainable forestry, we use the forest by removing products, often in the form of biological capital, and then restore its vitality, its sustainability, so that we can remove more products in time without impairing its ability to function. From the time we cut the original old growth, we must continually practice sustainable forestry. Anything else is not forestry. It is simply abuse of the system for short-term economic profit.[43]

Unless forestry practices in the South change soon and change dramatically, the losses in terms of both ecological and economic terms may well be unbearable.

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43. *Id.* at 277-78.

VII. HELPING LANDOWNERS PROTECT THEIR LAND IN PERPETUITY

Groups such as WildLaw[44] and the Sustainable Forests Alliance[45] seek to help private landowners protect their land for the uses they desire. One major tool used for protecting private land is the conservation easement.

In general, a conservation easement is a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, for the purposes of protecting or preserving the natural, scenic, historical or open-space values of the property. The easement permanently limits the uses of the land in order to assure its availability for forest, agricultural, recreational, educational, open-space or wildlife uses, maintain or enhance air and water quality or preserve the natural aspects of the property.[46] In other words, a conservation easement is a voluntary legal agreement between a private landowner and an easement holder, usually a public agency empowered to hold an interest in real property or a charitable organization such as a land trust.

Owning a piece of property comes with a number of rights. For example, a property owner generally has the right to construct buildings on his or her land, to subdivide the land, to allow or restrict access, or to harvest natural resources such as timber. A property owner can sell or give away any or all of these rights. If the property owner gives away some of these rights and retains others, he or she grants an easement of those rights given away to a third party. The third party (e.g., government agency or charitable organization) then has the right to enforce those property rights granted to them in the easement.

Each easement can be specifically tailored to meet the landowner's interests and personal objectives for the property. Each conservation easement document contains the specific rights the property owner gives away in order to protect his or her land. For example, a property owner may give away the right to subdivide the land, to allow or limit access, or to harvest all or a portion of the timber resources. Most conservation easements are granted in perpetuity, assuring property owners that the values of their land that they seek to preserve will be protected indefinitely.

Donating a conservation easement can reduce a property owner's income tax. The donation of a conservation easement qualifies as a tax-deductible charitable gift, provided that the

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44. More information about this group is available at http://www.wildlaw.org.

45. More information about this group is available at http://www.southernsustainableforests.org.

46. *See, e.g.*, MISS. CODE § 89-19-3; ALA. CODE § 35-18-1.

easement is donated to a qualified public agency or conservation organization "exclusively for conservation purposes ... [and] protected in perpetuity."[47] For tax purposes, "conservation purpose" is generally defined as:

> the preservation of land areas for outdoor recreation or public education; the protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem; and the preservation of open space (including forest land) where the preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, state or local governmental policy.[48]

To determine the value of the conservation easement donation, the property owner has the property appraised at both its fair market value without the easement restrictions and its fair market value with the easement restrictions. The difference between these two values is the value of the conservation easement.

Granting a conservation easement can reduce a property owner's estate tax. Many heirs to large tracts of land face monumental estate taxes. Although heirs may want to keep the property in its existing condition, federal estate taxes are levied on the property's fair market value, not on the value of its existing use. The fair market value is usually the amount a developer or speculator would pay. The estate tax can be so high that the heirs must sell the property to pay the taxes or, at a minimum, clearcut the land to get enough money to pay the taxes.

Conservation easements can reduce estate taxes by decreasing the fair market value of the property. If an owner has restricted the development of the property through a conservation easement before his or her death, the property is then valued at its restricted value. Thus, the property will be subject to a lower estate tax. If owners do not want to restrict the property during their lifetime, they can specify in a properly structured will that a charitable gift of a conservation easement be made upon their death. The value of the easement will be subtracted from the value of the property, again resulting in lower estate taxes.

Granting a conservation easement can reduce a property owner's property tax. In general, property tax assessment is based on the property's market value, which reflects the property's

47. I.R.C. § 170(h)(5)(A).
48. *Id.*

development potential. If a conservation easement reduces the development potential of the property, it may reduce the amount of the property owner's property tax. However, state laws and the attitude of local property tax assessors may determine whether property tax relief will be granted to a conservation easement donor. In short, a conservation easement is a flexible tool that protects land while leaving it in private ownership.

Environmental groups also help private landowners by providing them free forestry and legal advice. Some groups, like several in the Sustainable Forests Alliance, are hiring their own foresters in order to provide unbiased advice to landowners about what techniques and what equipment would best meet their needs while having the least amount of adverse impact on their land. Often, landowners only hear from the large timber companies, and the advice those corporations give landowners is anything but comprehensive. Normally, it is nothing more than "you should clearcut it all," because that is the logging method that benefits the corporation the most. Environmental groups can provide a valuable second opinion to landowners that will show them the true range of options they have when they want to manage their land for timber production. Then the decision on what to do with the land and why is truly up to the landowner.

Legal advice on things such as what contract clauses should go into a logging contract to make the logging company respect and care for a landowner's land can make the difference between a profitable logging operation that leaves the land intact the way the landowner wants or a barren, sun-baked desert. Many times, I have seen landowners find out too late that the logging contract they signed allowed the corporation to strip their land bare, even when the landowner specifically told them not to. Landowners who get good contract information before they agree to logging on their land can insure that better results occur and that unscrupulous companies are punished.

A number of new efforts to unite environmentalists, landowners, foresters and other forestry practitioners are now underway. These efforts include the aforementioned Sustainable Forests Alliance, the Southern Forests Network and the Model Forest Policy Program. The Southern Forests Network (SFN) is bringing together environmental groups and organizations that are made up of foresters, loggers and other practitioners who practice sustainable forestry methods. Key participants in the SFN include WildLaw, Appalach-

ian Voices,[49] the Forest Stewards Guild[50] and The Forest Management Trust,[51] based in Florida.

The Model Forest Policy Program brought together attorneys, scientists, foresters, economists and people from other disciplines to develop a model forest practices act. This model act will include a set of model provisions for forest management regulation and incentives for encouraging sustainable forestry. The idea behind the model act is to provide statutory language, regulatory language and supporting materials to allow state policy makers to pick and choose among the various provisions to craft sustainable forestry policies that fit their state situations. It should be finished and available for use by the time of the publication of this article.[52]

There is a great need for sustainable forestry policies in the Southern states. As shown above, BMPs are entirely voluntary in most states. Monitoring of compliance with BMPs has been erratic and spotty at best throughout the various southern states.[53] For example, Alabama monitors BMP compliance only through aerial reconnaissance, but it is impossible to determine if road crossings, culverts and other detailed requirements of BMPs are being followed when one is flying overhead at 1,000 feet at 200 miles per hour. Even with such an imprecise and crude method as Alabama's aerial surveys, the state still reported that 20 percent of the logging operations looked at failed to comply with BMPs for streamside management zones.[54] Virginia has a requirement that the state agency be notified of logging operations prior to their beginning; that state actually surveys a certain amount of logging operations on the ground for BMP compliance. In Virginia, logging operations' full compliance with all BMPs ranged from 16 percent in 1991 to 7

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49. More information about this group is available at http://www.appvoices.org.

50. More information about this group is available at http://www.foreststewardsguild.org.

51. More information about this group is available at http://www.foresttrust.org.

52. Once the model act is finished and available, it will be on WildLaw's web site, www.wildlaw.org.

53. States have differed in their aggressiveness toward monitoring BMP implementation, a direct reflection of State priorities and available resources. Seven States have completed more than one comprehensive statewide survey (Florida, 10; Texas, 4; Louisiana, 3; Georgia, 3; Arkansas, 2; North Carolina, 2; and Tennessee, 2). Louisiana is in the process of data analysis and report preparation of its fourth survey. South Carolina has completed four harvesting BMP and two site-preparation BMP surveys. Their current survey system is unique to the region in that it includes three visits to each surveyed site to observe status of BMPs. Alabama has surveyed implementation in differing manners since 1994, but has produced no formal survey report to date. Mississippi and Kentucky have completed one statewide survey, but neither has published a formal report to date. Pursuant to State law, Virginia monitors a percentage of the activities of which it is notified. Oklahoma is planning but has not yet surveyed BMP implementation statewide.
U.S. FOREST SERV., SOUTHERN FOREST RESOURCE ASSESSMENT § 5.4 (2002).

54. *Id.*

percent in June 1999.[55] The reality is that a drive down any highway in the South can quickly reveal numerous clear violations of BMPs at many logging operations visible from the road. Indeed, WildLaw has handled a number of cases for landowners who wanted to sue upstream neighbors who violated BMPs and thus caused damage to our clients' land and streams. If BMPs were being enforced, such instances should not occur.

The main forests policy in most southern states is no policy; they allow the industry and forestry practitioners to do whatever they want whenever they want without any oversight or monitoring at all. Most states do nothing to ensure sustainable forestry practices are used, and they do nothing to keep forestlands in forests instead of being developed. Such a policy of inaction is doomed to failure with costs that we will all pay both environmentally and economically.

VIII. CONCLUSION

The Southern United States is currently the largest timber producing region in the world. To maintain the health of the land and to ensure that landowners get long-term benefits, other voices must become fully and equally involved in the discussion over how land will be managed and how logging operations will occur. Despite the divisive rhetoric of multinational corporations and their puppet front groups, the reality is that a private forest landowner will, more often that not, find his desires and wishes more closely aligned with environmentalists than with the corporations that wish to profit off of his land and work.

Environmental organizations do not want to put private landowners out of business; they do not want to lock up their land. Anyone who says otherwise is, quite simply, lying. In fact, environmentalists want landowners to have a perpetual and significant source of income from their forest lands much more than multinational corporations want that. What I advocate in this article is not that landowners stop listening to the timber industry that has demanded all their attention and their allegiance but only that landowners take the time to get all the facts. Listen to what environmentalists and practitioners of truly sustainable forestry have to say about forests, timber management and land conservation instead of what corporations tell you environ-mentalists are saying. A landowner who takes the time to learn the facts and find out what everyone involved is really after will be able to make better choices for the management of his or her land.

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55. *Id.*

Huge timber corporations want landowners to listen only to industry and do what they are told. Industry does not trust landowners enough to show them all the facts and all sides to the issue of forest management. Environmentalists and sustainable forestry practitioners like those in the Sustainable Forests Alliance, the Southern Forests Network and the Model Forest Policy Program trust the landowners of the South much more than industry does; we trust th at, once they have access to all information on forest management and conservation, landowners will make the right decisions. The entire South will be better off when forest landowners take the time to decide for themselves what is best for their lands.